

EXHIBIT A

Chapter 7

Emergency Management Under Title II of the ADA

In this Chapter, you will learn how to make emergency management programs, services, and activities accessible to everyone, including people with disabilities. Chapter 7 answers the following questions:

- What does emergency management cover?
- How does the ADA apply to emergency management?
- What are some of the common problems faced by people with disabilities in accessing emergency- and disaster-related services, programs, activities, and facilities?
- What are some of the steps that state and local governments can take to make emergency- and disaster-related services, programs, activities, and facilities accessible to people with disabilities?

A. ADA Basics for Emergency Management

One of the primary responsibilities of state and local governments is to protect residents and visitors from harm, including assistance in preparing for, responding to, and recovering from emergencies and disasters. State and local governments must comply with Title II of the ADA in the emergency- and disaster-related programs, services, and activities they provide.¹ This requirement applies to programs, services, and activities provided directly by state and local governments as well as those provided through third parties, such as the American Red Cross, private nonprofit organizations, and religious entities.² Under Title II of the ADA, emergency programs, services, activities, and facilities must be accessible to people with disabilities³ and generally may not use eligibility criteria that screen out or tend to screen out people with

¹ 42 U.S.C. § 12132; *see generally*, 28 C.F.R. §§ 35.130, 35.149.

² 28 C.F.R. § 35.130(b)(1).

³ 28 C.F.R. §§ 35.149 - 35.151.

disabilities.⁴ The ADA also requires making reasonable modifications to policies, practices, and procedures when necessary to avoid discrimination against a person with a disability⁵ and taking the steps necessary to ensure effective communication with people with disabilities.⁶ The ADA generally does not require state or local emergency management programs to take actions that would fundamentally alter the nature of a program, service, or activity or impose undue financial and administrative burdens.⁷

B. What is Emergency Management?

Emergency management is wide-ranging. It includes all programs, services, and activities related to emergencies and disasters, including:

- Preparation – advance planning for emergencies and disasters;
- Testing of Preparedness – staging emergency simulations and other approaches to testing the effectiveness of emergency preparedness;
- Notification – alerting the public to emergencies and disasters and to available programs, services, and activities;
- Community Evacuation and Transportation;
- Emergency Shelter Programs;
- Temporary Lodging and Housing;
- Social Services and Emergency- and Disaster-Related Benefit Programs;
- Emergency Medical Care and Services;
- Relocation Programs, Activities, and Services;
- Transition and Transportation Back to the Community Following an Emergency or Disaster;

⁴ 28 C.F.R. § 35.130(b)(8).

⁵ 28 C.F.R. § 35.130(b)(7).

⁶ 28 C.F.R. §§ 35.160 - 35.164.

⁷ 28 C.F.R. §§ 35.130(b)(7), 35.150(a)(3), 35.164.

- Emergency and Disaster Recovery Programs, Services, and Activities; and
- Remediation of Damage Caused by Emergencies and Disasters – repairing and rebuilding damaged facilities, removing debris, and relocation and re-introduction of state and local government programs, services, and activities following an emergency or disaster.

C. Preparation – Advance Planning for Emergencies and Disasters

An emergency management plan is the all-important first step in ensuring an effective response to emergencies and disasters. Public officials, specialists from organizations such as the American Red Cross, and community members should work together to develop a comprehensive plan to prepare for emergencies. One good way to test your emergency management plan is to enlist people with disabilities to role-play during emergency simulations. Seeking and using input from people with a variety of disabilities, and organizations with expertise on disability issues, will help ensure that your emergency planning and preparedness meet the access needs of people with disabilities in your community with respect to all phases of emergency management.

D. Notification – Alerting the Public to an Emergency

Officials must act quickly to alert the public to an impending emergency situation. But many traditional emergency notification methods are not accessible to people with disabilities. People who are deaf will not hear radio, television, sirens, or other audible alerts. Those who are blind or who have low vision may not be aware of visual cues, such as flashing lights. State and local governments need to use warning methods that ensure all residents and visitors will have the information necessary to make sound decisions and take appropriate, responsible action.

Often, using a combination of notification methods will be more effective than relying on one method alone. For instance, combining visual and audible alerts will reach a greater audience than either method would alone. Auto-dialed text telephone (TTY) messages to pre-registered individuals who are deaf or hard of hearing, text messaging, emails, and other innovative uses of technology may be incorporated into such procedures. For announcements by government officials on local television stations, providing qualified sign language interpreters and open captioning will ensure that all people tuning in are able to access the

information provided. The emergency management plan should identify the steps that will be taken and the resources that will be used to ensure that emergency notifications will be accessible to all.

E. Community Evacuation and Transportation

In an emergency, people with disabilities may face a variety of challenges in evacuating to safety. A person with a mobility disability may need assistance leaving a building without a working elevator. Individuals who are blind or who have low vision may no longer be able to independently use traditional orientation and navigation methods. A deaf person may be trapped somewhere unable to communicate with anyone because the only available communication device relies on voice. State and local governments need to establish procedures to ensure that people with disabilities can evacuate the area of an emergency in a variety of conditions, with assistance when it is needed.

One step that can significantly increase the effectiveness of your planning process is to create a voluntary, confidential registry of persons with disabilities who may need individualized notification or evacuation assistance. Setting up a voluntary registry requires that procedures be implemented to ensure that the registry is voluntary, confidentiality is protected, and information is updated as needed.

Both public and private transportation may be disrupted due to overcrowding, because of blocked streets and sidewalks, or because the transit system is not functioning at all. **The movement of people during an evacuation is critical, but many people, because of their disabilities, cannot drive or use traditional, inaccessible transportation.** Thus, emergency plans must identify accessible forms of transportation (i.e., vehicles equipped with wheelchair lifts) available to help evacuate people with disabilities. For instance, some communities have used lift-equipped school buses, transit buses, or paratransit vehicles to evacuate people who use wheelchairs or scooters. Some people with disabilities will be able to reach mass evacuation pick-up locations independently, while others may be unable to leave their homes without assistance. Evacuation and emergency transportation plans should address the evacuation-related needs of people with disabilities.

F. Emergency Shelter Programs

When emergencies arise, communities often provide residents and visitors with safe refuge in temporary shelters. Shelters are sometimes operated by

government entities themselves. More often, they are operated by a third party. Regardless of who operates a shelter, the ADA generally requires shelter operations to be conducted in a way that offers people with disabilities the same benefits – e.g., safety, comfort, food, medical care, the support of family and friends – provided to people without disabilities. Because sheltering programs are critical to ensuring the safety of people with disabilities in emergencies and disasters, ADA requirements for sheltering are discussed in greater detail in two stand-alone technical assistance documents that state and local governments can provide to shelter operators to assist them in planning to meet the needs of people with disabilities in the shelter environment. While these technical assistance documents do not address all ADA compliance issues that may arise in emergency shelters, they address a number of the most common access problems.

The first of these technical assistance documents – “The ADA and Emergency Shelters: Access for All in Emergencies and Disasters” is in Addendum 2 to this Chapter at www.ada.gov/pcatoolkit/chap7shelterprog.htm. It discusses the ADA’s nondiscrimination requirements for shelter programs. The second technical assistance document – “ADA Checklist for Emergency Shelters” is in Addendum 3 to this Chapter at www.ada.gov/pcatoolkit/chap7sheltercheck.htm. The Checklist includes two assessment tools to help state and local governments and emergency shelter operators ensure that emergency shelters provide access to all: (1) a preliminary survey tool that will help in deciding if a facility has the accessibility characteristics that make it a good candidate for a potential emergency shelter, and (2) a more detailed checklist that will help identify the most common architectural barriers to access for people with disabilities found at emergency shelters.

G. Access to Social Services, Temporary Lodging or Housing, and Other Benefit Programs

State and local governments often provide social services and other benefit programs to assist people harmed by emergencies and disasters. These programs need to be accessible to all, including people with disabilities. Following are some important points to remember:

- Application procedures should not limit access by people with disabilities. For example, programs that require people to apply by telephone may exclude people who are deaf or hard of hearing. Inaccessible web-based application procedures and printed application forms may exclude people who are blind or have low vision. Programs that require in-person applications may exclude people who, because of their disabilities, are

unable to leave shelters or their homes. Procedures that allow people to apply in different ways – providing auxiliary aids and services and reasonable modifications to application procedures when people with disabilities need them – is the most effective way to ensure equal access.

- Information about social services and other benefit programs should be available in formats that people with communication disabilities can use. For example, during emergencies, announcements about the availability of social services and other benefits are often made orally, whether in radio and television broadcasts or in public announcements at emergency shelters. People who are deaf or hard of hearing may not receive information about these programs unless television broadcasts have open captions, materials describing the programs are posted on websites, or public announcements are translated by a sign language interpreter or posted on shelter bulletin boards.
- Crisis counseling services will not be accessible to people who are deaf or hard of hearing unless appropriate auxiliary aids and services are provided. In addition, these services need to be offered in physically accessible locations so people with mobility disabilities can use them.
- Temporary lodging or housing programs will not be accessible to people with mobility disabilities or people who are deaf or hard of hearing unless accessible hotel rooms or accessible temporary housing is available. People with disabilities may be unable to utilize temporary lodging or housing programs without assistance in locating a hotel room or housing that meets their disability-related needs, or without accessible transportation. To prepare for the potential need for temporary housing, identify in your emergency response plan available physically accessible short-term housing, as well as housing with appropriate communication devices, such as TTY's. Temporary accessible housing (such as nearby accessible hotel rooms) may be used if people with disabilities cannot immediately return home after a disaster.

Access to Temporary Housing

People with disabilities may have more difficulty locating temporary housing or lodging than others. For example, someone with a mobility disability may need to personally verify that an entrance to an apartment has no steps or that the accessible features of a bathroom or kitchen meet his needs. Some people who are blind or have low vision may not be able to locate addresses in an unfamiliar community or determine if an apartment is clean and safe without assistance. For these reasons people with disabilities may need extra time and help, including transportation assistance, in locating housing.

H. Repairing and Rebuilding

Emergencies and disasters often damage state and local government facilities. In the recovery stage of emergency management, state and local governments often make alterations to facilities to repair such damage, construct facilities to replace those that were destroyed or extensively damaged, or move government programs, services, and activities from damaged facilities to other locations. When constructing new or replacement facilities and repairing damaged facilities, state and local governments must comply with the accessibility requirements of Title II of the ADA. They may choose from two design standards for new construction and alterations – either the Uniform Federal Accessibility Standards (UFAS) or the ADA Standards for Accessible Design (ADA Standards). If the ADA Standards are chosen, public entities are not entitled to the elevator exemption contained in § 4.1.3(5) of the Standards. If the building was newly constructed or altered after the ADA went into effect, then the design standard used at that time must be followed for the rebuilding. Alterations to facilities must not decrease accessibility.

State or local government facilities constructed after January 26, 1992 and alterations to such facilities must comply with the new construction requirements of Title II of the ADA.⁸ Alterations to facilities constructed before the ADA became effective, must comply with Title II's requirements for alterations to existing facilities.⁹ Under the ADA Standards, alterations to primary function

⁸28 C.F.R. § 35.151.

⁹28 C.F.R. § 35.151.

areas of existing facilities trigger a "path of travel" requirement – i.e., a requirement to make the path of travel from the entrance to the altered area accessible, including telephones, restrooms, and drinking fountains serving the altered area.¹⁰ Primary function areas are those where major activities take place. But a public entity is not required to spend more than 20 percent of the cost of the original alteration on making the path of travel accessible, even if this cost limitation results in less than full accessibility. Under UFAS, if an existing facility undergoes a "substantial alteration," the public entity must provide (1) an accessible route from public transportation, parking, streets, and sidewalks to all accessible parts of the building; (2) an accessible entrance; and (3) accessible restrooms.¹¹ A "substantial alteration" for purposes of UFAS is where the total cost of all alterations in a 12-month period amounts to 50 percent or more of the value of the building.

When moving programs from a damaged facility to another location, state and local governments must ensure that the programs remain accessible to people with disabilities.¹² This requirement applies whether the program is relocated permanently or temporarily.

I. Steps to Ensure Access for All in Emergencies and Disasters

Here are some steps you can take now to ensure that emergency management programs, services, and activities are accessible to everyone, including people with disabilities.

- ✓ **Advance Planning:** On an on-going basis, seek and use input from people with different types of disabilities (*i.e.*, mobility, vision, hearing, cognitive, psychiatric, and other disabilities) regarding all phases of your emergency management plan, including:
 - preparation;
 - notification;
 - evacuation and transportation;

¹⁰ 28 C.F.R. Part 36, Appendix A, § 4.1.6(2).

¹¹ 41 C.F.R. Part 101 - 19.6, Appendix A, § 4.1.6(3).

¹² 28 C.F.R. §§ 35.149 - 35.151.

- sheltering;
 - first aid and medical services;
 - temporary lodging and housing;
 - transition back to the community;
 - clean up; and
 - other emergency- and disaster-related programs, services, and activities.
- ✓ **Voluntary Registry:** Create voluntary, confidential registries of persons with disabilities who may need individualized evacuation assistance, transportation, and/or notification. Establish procedures to ensure the registry's voluntariness, guarantee confidentiality controls, and develop a process to update the registry when needed. Publicize the availability of the registry.
- ✓ **Notification:** If you use emergency warning systems such as sirens or other audible alerts, provide ways to provide people who are deaf or hard of hearing prompt notice of an impending disaster. Combine visual and audible alerts to reach a greater audience than either method would by itself. Consider using telephone calls, auto-dialed TTY (teletypewriter) messages, text messaging, emails, and even direct door-to-door contact with pre-registered individuals. Also, consider using open captioning on local TV stations, and dispatching qualified sign language interpreters to assist in broadcasting emergency information provided to the public.
- ✓ **Ensure Access for People with Disabilities Who Use Service Animals:** Modify "no pets" policies to enable people with disabilities to evacuate, use emergency transportation, stay in shelters, and participate in all emergency- and disaster-related programs together with their service animals. Teach first responders and the employees, volunteers, and third parties who perform emergency- and disaster-related functions that people with disabilities should not be separated from their service animals even in places where pets are typically not allowed. Only two questions may be asked to determine if an animal is a service animal: (1) Is this animal a service animal required because of a disability? (2) What tasks or work has this animal been trained to perform? If the answers to these questions reveal that an animal has been trained to provide assistance to a person with a disability, that person should be able to access services,

programs, activities, and facilities while accompanied by his service animal. Service animals do not require certification, identification cards or licenses, special equipment, or professional training.

- ✓ **Evacuation and Return Home:** Adopt policies to ensure that your community evacuation and recovery plans enable people with disabilities, including those who have mobility, vision, hearing, cognitive, and psychiatric disabilities to safely self-evacuate, to be evacuated by others, and to return home.
- ✓ **Transportation:** Some people with disabilities will need accessible transportation. Identify accessible modes of transportation, such as wheelchair lift-equipped school buses, transit buses, paratransit vehicles, and taxis that will be available to evacuate people with disabilities during an emergency. Ensure that transportation plans address people with disabilities' needs to transport mobility aids, such as wheelchairs or scooters, oxygen tanks or other medical equipment, and service animals.
- ✓ **Shelters – Policies:** Review your sheltering program to ensure that rules, policies, and procedures comply with ADA requirements. Use the Department of Justice's technical assistance publication, "The ADA and Emergency Shelters: Access for All in Emergencies and Disasters," which is located in Addendum 2 to this Chapter and at www.ada.gov/pcatoolkit/chap7shelterprog.htm. All shelter operators need to know the ADA requirements discussed in this Chapter, including the Addenda. If your sheltering program is operated through any third parties, provide them with a copy of these materials.
- ✓ **Shelters – Physical Accessibility:** Survey your community's current shelters for barriers to access for persons with disabilities. Use the Department of Justice's "ADA Checklist for Emergency Shelters," which is located in Addendum 3 to this Chapter, and at www.ada.gov/pcatoolkit/chap7sheltercheck.htm.
 - **If you find barriers to access, remove the barriers or work with the facility's owner to remove them.**
 - **If barriers remain, find another nearby facility that is or can be made accessible. In identifying new or alternative shelter locations, use the preliminary survey tool which will help you determine if a facility is a good candidate for a potential emergency shelter.**

- Until all emergency shelters have accessible parking, exterior routes, entrances, interior routes to the shelter area, sleeping and recreational areas, dining facilities, and toilet/bathing rooms, **identify and widely publicize to the public, including persons with disabilities and organizations with expertise on disability issues, the locations of the most accessible emergency shelters and the accessible features they provide.**
 - Adopt procedures to ensure that shelter staff and volunteers **maintain accessible routes and minimize protruding objects.**
- ✓ **Social Services and Other Benefit Programs:** Review your social service and other emergency- and disaster-related programs, services, and activities to ensure that people with disabilities have an equal opportunity to apply for and benefit from them.
- Ensure that eligibility criteria do not unnecessarily screen out or tend to screen out people with disabilities – e.g., requiring a driver's licence excludes people who, because of their disability, cannot drive; requiring a telephone number excludes many people who are deaf or have a speech disability.
 - Ensure that architectural barriers do not deny access to people with mobility disabilities.
 - Ensure that communication barriers do not deny access to people with disabilities. Establish policies and procedures to provide the auxiliary aids and services needed to communicate effectively with people with disabilities, giving primary consideration to the auxiliary aids and services requested by an individual with a disability.
 - Provide training so that employees and volunteers who staff these programs understand their ADA obligation to provide effective communication and make reasonable modifications to policies, practices, and procedures when necessary to avoid discrimination against people with disabilities.
- ✓ **Incident Management:** During emergencies and disasters, first responders, emergency transportation drivers, and shelter staff often have questions about how to handle issues that arise. When these issues involve people with disabilities, ADA obligations are often implicated. Consider appointing one or more persons knowledgeable on ADA requirements and disability issues (ADA Incident Managers) who will be

on-call throughout emergencies and disasters to provide quick guidance on issues that may involve the ADA and/or a person with a disability.

- ✓ **Recovery:** During disasters, government facilities can be damaged or destroyed. When altering or rebuilding after a disaster, ensure that alterations to facilities and the design and construction of new or replacement facilities comply with all applicable federal accessibility requirements.